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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

9087

FILE: B-193953

DATE: February 23, 1979

MATTER OF: Gross Engineering Company -10/9

DIGEST:

[Protester's late bid was properly rejected] by agency notwithstanding mailing of bid by U.S. Postal Service special delivery 2 days prior to bid opening, since it was not sent by certified or registered mail as provided by IFB and in absence of showing that proposal was mishandled by agency making procurement after its timely receipt.

Gross Engineering Company (Gross) protests the rejection of its bid by the United States Penitentiary, Leavenworth, Kansas (Leavenworth), under invitation for bids (IFB) No. 132-8918. ¹⁰¹⁹

The basis for the rejection was that Gross' bid was received by Leavenworth after the time for bid opening specified in the IFB (December 21, 1978, at 2:00 p.m.). On December 19, 1978, the bid package was delivered to and sent by the Lambert Airport Branch of the United States Postal Service via special delivery, which guaranteed delivery by the next day. However, the bid was not received until 9:15 a.m., December 22, 1978 (time/date stamped on bid envelope). Therefore, the bid was determined to be a late bid. ₁₀₂₀

Gross contends that in accordance with clause 7, "Late Bids, Modifications of Bids, or Withdrawal of Bids," of Standard Form (SF) 22, "Instructions to Bidders," its bid should be reviewed "to determine the accurate mailing and subsequent receipt" of its bid. Standard Form 22 was incorporated into the IFB.

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Clause 7 states in pertinent part:

"Late Bids and Modifications or Withdrawals. (This paragraph applies to all advertised solicitations. * * *

"(a) Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless:

- (1) They are received before award is made; and either
- (2) they are sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the Government that the late receipt was due solely to delay in the mails for which the bidder was not responsible, or
- (3) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation: Provided, That timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted."

It is our view that Gross' bid was properly rejected by the contracting officer. Our Office has consistently held that an offeror has the responsibility to assure timely arrival of its bid or offer and must bear the responsibility for its late arrival unless the specific conditions of the IFB are met. Robert Yarnell Richie Productions, B-192261, September 18, 1978, 78-2 CPD 207.

Under the terms of the IFB, a late bid may be considered only if sent by registered or certified mail in the manner outlined above or where "the late receipt was due solely to mishandling by the Government after receipt at the Government installation" at which the procurement is being made. Gross' bid was not mailed by certified ~~or~~ registered mail, but by special delivery 2 days prior to bid opening. Therefore, it is not for consideration under the first exception. For consideration under the second exception, there must be documentary evidence, such as a time/date stamp, showing timely receipt at the installation and subsequent mishandling by the Government. Adrian L. Merton, Inc., B-190982, May 9, 1978, 78-1 CPD 351. The time/date stamp on the envelope was 9:15 a.m., December 22, 1978, after bid opening. Therefore, the second exception is not applicable. Furthermore, the Postal Service's failure to deliver the bid the next day as guaranteed does not constitute mishandling at a Government installation. Kessel Kitchen Equipment Co., Inc., B-189447, October 5, 1977, 77-2 CPD 271.

Gross also contends that due to its "timely notification" to the contracting officer (less than 30 minutes after bid opening) that its bid, even though it had not been received, was approximately \$20,000 lower than the low bidder award should be made to it under clause 10 of SF 22 as the most advantageous bid, price and other factors considered.

However, section 1-2.301 of the Federal Procurement Regulations (1964 ed. amend. 178) states that for a bid to be considered for award it must comply with the IFB (as to the method and timeliness of submission and as to the substance of any resulting contract) so that all bidders may stand on an equal footing and the integrity of the formal advertising may be maintained. Since Gross' bid was late, it did not comply with the IFB and, therefore, cannot be considered for award.

Generally, our Office will request a report from the procuring agency upon receipt of a bid protest in accordance with our Bid Protest Procedures. However, where it is clear from a protester's submission that

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the protest is legally without merit, we will decide the matter on that basis. MEMCOM, B-191526, April 6, 1978, 78-1 CPD 276. Therefore, the protest is summarily denied.


Deputy Comptroller General
of the United States